UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1213
22 April 1993

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1213th MEETING

Held at Headquarters, New York,
on Thursday, 25 March 1993 at 3 p.m.

Chairman: Mr. ANDO

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of the Dominican Republic

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of the Dominican Republic (CCPR\C\70\Add.3)

1. At the invitation of the Chairman, Mr. Pichardo Olivier and Ms. Abreu de Polanco (Dominican Republic) took places at the Committee table.

2. Ms. ABREU DE POLANCO (Dominican Republic) stated that there had indeed been developments in the human rights situation in her country since the third periodic report had been prepared. For example, while the report stated that Decree No. 417-90 had been adopted for the purpose of regularizing the status of Haitians in the Dominican Republic and repatriating those residing there without documentation, Haitians employed as sugar cane cutters were now furnished with temporary residence papers and permitted to keep those documents in their possession. Changes had also been made in the electoral system with a view to developing a more transparent system. There was no systematic violation of human rights in her country, although, as in all countries, isolated instances might sometimes occur. However, the Dominican Republic sought to uphold those international instruments to which it had acceded.

Constitutional and legal framework within which the Covenant is implemented; state of emergency; non-discrimination; prohibition of forced labour (articles 2, 4, 8 and 26 of the Covenant) (section I of the list of issues)

3. The CHAIRMAN read out section I of the list of issues concerning the third periodic report of the Dominican Republic, namely: (a) the existence of cases, during the period under review, in which the provisions of the Covenant had been directly invoked in the courts or mentioned in court decisions; (b) the extent to which the provisions of article 37, paragraphs 7 and 8, of the Constitution, concerning the possible restriction of rights recognized in the Covenant during states of siege or national emergency, conformed to the provisions of article 4, paragraph 2, of the Covenant; (c) the application of the principle of reciprocity in the treatment of aliens; (d) the restriction of the rights of aliens as compared with the rights enjoyed by Dominican citizens, other than in the exercise of political rights; (e) the status of Haitian workers since the adoption of Decree No. 417-90; (f) measures, if any, taken to prevent abuse of Haitian workers during their transfer to and stay on sugar cane plantations, particularly any investigation of allegations of forced labour or of seizure of identity documents; (g) follow-up actions taken pursuant to the Committee's views on communication No. 193/1985.

4. Ms. ABREU DE POLANCO (Dominican Republic), referring to section I (a), said that if provisions of the Covenant had been directly invoked in national courts, her Government had no knowledge thereof. The country planned to establish a human rights centre both to investigate human rights abuses and to promote awareness of human rights instruments.

(Ms. Abreu de Polanco, Dominican Republic)

5. With regard to section I (b), no state of siege or emergency had been declared in the Dominican Republic since 1965; indeed, constitutional rights were never suspended. With regard to section I (c), the report indicated that there was no law which specifically governed the situation of aliens in the Dominican Republic. However, under articles 11 and 13 of the Civil Code - which were adapted from articles 11 and 13 of the French Civil Code - aliens in the Dominican Republic enjoyed the same civil rights as nationals. That reciprocal recognition of civil rights meant that there was no discrimination against either aliens or nationals within the Dominican Republic. Political rights, however, as mentioned in section I (d), could be exercised only by Dominican citizens.

6. With reference to sections I (e) and (f), she noted that President Aristide had been removed from power subsequent to the adoption of Decree No. 417-90, and that the decree had consequently been rendered ineffective. Currently, all Haitians who travelled to the Dominican Republic to cut sugar cane were provided with temporary residency cards, which they were required to keep in their possession. As to the communication referred to in section I (g), concerning a French national arrested in the Dominican Republic and deported to the United States of America by virtue of the extradition agreement between the Dominican Republic and the United States and Dominican law No. 489, the complainant had been sentenced to 28 years of imprisonment for drug trafficking (by the United States Federal Court in Puerto Rico).

7. Mr. PRADO VALLEJO said that further information on the status of the Covenant in the Dominican Republic would be helpful. For instance, it was unclear whether aliens benefited from the same civil rights as did Dominican nationals; could they invoke the terms of the Covenant in a Dominican court? He also wondered whether domestic law has precedence over international law, or vice-versa. It was also unclear whether paragraph 23 signified that the terms of the Covenant became invalid if that instrument was not incorporated into national law, or whether the Covenant had in fact been incorporated into national law in the Dominican Republic. Nor did the report suggest that the Covenant had been publicized in the Dominican Republic. It would also be interesting to learn whether the report had been published in the Dominican Republic, so that citizens could be informed of their Government's position vis-à-vis the Covenant.

8. The report did not specify what sort of restrictions of rights might go into effect in a state of emergency. Paragraph 35 simply stated that the right to life was ensured. However, that was insufficient: article 4 of the Covenant contained a list of other rights that must not be derogated, such as freedom of religion or freedom of conscience.

9. It would be useful to know how the Dominican Republic reconciled its obligations under international human rights agreements with the concept of reciprocity. The fact that other States failed to respect the Covenant did not mean that the Dominican Republic was not obligated to guarantee those rights reciprocally. The concept of reciprocity set out in paragraph 27 of the report needed clarification.

(Mr. Prado Vallejo)

10. Paragraph 70 of the report stated that, under the Migration Act of 14 April 1939, aliens could be deported if they became dependent on the State within five years after entry, even when no law was broken (para. 6). Yet that Act also stipulated that in cases of deportation, an alien could be detained for up to three months and, if deportation was not possible, could be sentenced to a prison term of from six months to two years (para. (11) (f)). Those provisions contravened article 13 of the Covenant. In the case of the deportation of an alien, a legal trial must take place, and the alien also had the right to appeal his deportation.

11. It would be useful to know whether a citizen of the Dominican Republic, and therefore also an alien, could be exiled without grounds simply by order of the Government. The grounds given in paragraph 66 of the report were inconsistent with the Covenant. Paragraph 74 stated that a person accused of a crime who confessed to that crime could be deported and obliged to sign a memorandum inculpating himself for the crime. Yet one of the basic principles of human rights was that a person could not be forced to confess to a crime; it was incumbent upon the State to prove his guilt.

12. He was aware of the recent laws formulated to benefit Haitians working in the Dominican Republic. Nevertheless, certain facts were disquieting: under Decree No 233-91, workers under the age of 16 and over the age of 60 were summarily expelled from the country, without grounds or trial, whether or not they had been born or had spent their lives in the country. As that not only violated the Covenant but was also inhuman, an explanation was in order. With regard to measures to protect Haitian workers, the report had not provided sufficient information on the question of forced labour. He drew the Committee's attention to a report from the International Labour Organisation (ILO), which stated that Haitians who worked in the Dominican Republic during the sugar-cane-cutting season were kept in virtually slave-like conditions. In fact, bands of police went to Haiti, extracted Haitian workers by force and transported them to the Dominican Republic for the sugar cane harvest. They were held in Haiti and prevented from returning to their country not by legal measures so much as by police methods. The Haitians were indeed subject to ill-treatment by the police. Nothing in the report suggested that that situation had changed during the past five years. The State party should clarify that difficult and painful issue.

13. Mr. BRUNI CELLI said that the problems of Haitian workers constituted the most important aspect of the human rights situation in the Dominican Republic. Unfortunately, the remarks by the representative of the Dominican Republic seemed to imply that her Government had viewed President Aristide as being more likely than the current Head of State to protect the rights of Haitian workers in the Dominican Republic. If the current international efforts to re-establish the Aristide Government proved successful, he wondered whether the Dominican Government would resume its deportations of Haitian workers at the same rate as under the previous Aristide administration.

14. He would appreciate additional information concerning the freedom of movement and the working conditions of Haitian workers in the sugar cane plantations. Further details should also be provided on the recruitment system

(Mr. Bruni Celli)

and the role of the "professional recruiters" who brought Haitian workers to the Dominican Republic at their own expense. Such illegal entry procedures meant that, under Dominican law, Haitian workers and their children could be deported at any time, since they did not have papers. In particular, the law which provided for the deportation of Haitians under the age of 16 and over the age of 60 needed clarification.

15. Mr. AGUILAR said that it was unclear from the report how the State party was responding to the Committee's previously expressed concerns regarding the issue of forced labour in the Dominican Republic. Moreover, despite the statement in paragraph 54 that the institution of slavery had been abolished in 1822, the report did not provide an adequate picture of the real human rights situation in the country; the Committee was thus compelled to rely on the ample information which it had received from other sources.

16. Paragraph 16, which stated that the Office of the Procurator-General of the Republic was the body which had competence to ensure full respect for human rights, was in conflict with paragraph 24, which stated that there was no entity at the governmental level which was directly responsible for supervision of the implementation of human rights. If that was true, then there were no guarantees that the Covenant would be implemented.

17. Paragraph 22, which indicated that any international instruments approved by the National Congress became part of the national legal order with the same rank or standing as any ordinary provision, implied that laws which derogated from the provisions of the Covenant could also become part of the national legal order. In paragraph 23, the concepts of approval and ratification were treated as interchangeable. It was unclear whether an international agreement was immediately converted into domestic law once it had been approved or ratified by the National Congress.

18. The Dominican representative's statement that she did not know of cases in which the provisions of the Covenant had been directly invoked in the courts was a matter of concern. It would be useful to learn whether, in view of the political disturbances that had taken place in the Dominican Republic in recent years, there had been any occasions on which human rights guarantees had been suspended. Article 37 of the Dominican Constitution, which provided for the suspension, in case of emergency, of several of the rights guaranteed by article 8 of the Constitution was in conflict with article 4, paragraph 2, of the Covenant.

19. With reference to paragraph 27 of the report, regarding the civil rights of aliens in the Dominican Republic, he found it unacceptable that a State party should implement the provisions of the Covenant on the basis of the principle of reciprocity.

20. Turning to paragraph 66, he requested clarification of article 85 of the Penal Code, under which any person who, by means of acts neither approved nor authorized by the Government, exposed Dominicans to reprisals against their person or their property, would be punished by exile. That implied that the Government might, on some occasions, authorize such reprisals.

(Mr. Aguilar)

21. The report left many questions about the treatment of Haitian workers in the sugar cane plantations unanswered. The information received by the Committee indicated that the plantations were militarized; workers were not permitted to leave and, if they attempted to flee, were pursued by the security forces and forcibly returned. Despite the statement in paragraph 30 of the report that the presence of all Haitians in Dominican territory was being regularized, recent press reports indicated that the authorities were not certain how many Haitian workers were present in the country. Those workers laboured under appalling conditions and frequently were not paid in cash, but with vouchers that could be exchanged only in the offices of the sugar company, at a discount of 25 per cent.

22. With regard to communication No. 193/1985, it was unclear whether the Government had taken any action to remedy the complainant's situation. The reporting State should clarify its extradition procedures since, in view of the circumstances under which the complainant had been arrested, it was difficult to believe that he had benefited from due process of law. It would also be interesting to learn why the complainant, a French citizen, had been deported to the United States of America for sentencing.

23. Mrs. HIGGINS said that the lack of detail in the State party's second periodic report might indicate that a plateau had been reached in the Dominican Republic's progress in complying with the Covenant. Referring to sections I (a) and I (b) of the list of issues, she noted that the report had not clearly indicated the frequency with which the Covenant had been invoked in Dominican courts, or the general level of awareness of its provisions among Dominican lawyers and judges. Moreover, the Dominican Constitution's description of the circumstances under which states of emergencies could be declared and the extent to which civil and political rights could be restricted under states of emergency were much broader than the Covenant allowed. She wondered why the Dominican Republic had not simply altered its Constitution as it had agreed to do upon accession to the Covenant.

24. She asked what concrete measures the Dominican Government was taking to monitor the labour conditions of Haitian nationals working on Dominican sugar cane plantations. Simply to require notification of employment of Haitian nationals was not in itself an adequate measure. With regard to follow-up action taken in response to the Committee's views on communication No. 193/1985, she wished to know the reason for the delay in the State party's response.

25. Mr. POCAR said that he, too, had found the State party's report lacking in details; as a result, it was difficult to determine whether the Government had actually made any progress in implementing the Committee's recommendations. He agreed with Mrs. Higgins that the report was unclear about the standing of the Covenant in Dominican law, in particular whether the Civil Code took precedence, as paragraph 108 appeared to indicate.

26. He recalled that a representative of the Dominican Republic had stated, in connection with a previous periodic report, that there had been cases before Dominican courts in which the Covenant had been invoked. In the report before the Committee, however, no mention of such cases was made. He failed to

(Mr. Pocar)

understand that omission if progress was being made towards enhancing the standing of the Covenant in Dominican law.

27. Mrs. EVATT said that while the report frequently mentioned new laws enacted to give effect to the Covenant, it contained little information about the enforcement of those laws. She requested additional information concerning the competence, authority and procedures of the Centre for Human Rights mentioned in paragraph 26 of the report.

28. With respect to issues relating to article 8 of the Covenant, she requested additional information concerning: the role of the State Sugar Council in the recruitment of foreign labour and the use of armed security guards for that purpose; the rights of families to accompany workers to sugar cane plantations; government efforts to regularize the status of migrant workers through documentation; the use of vouchers instead of the national currency as wages; and the right of plantation workers to organize and to engage in collective bargaining with sugar producers. She also wanted to know what agencies had been established to act on behalf of individual workers in cases of disputes with employers.

29. Mr. MAVROMMATIS said that, contrary to claims made in the report, it appeared that the Covenant had relatively low standing in Dominican law. He did not fully understand the State party's response to the Committee's questions about reciprocity, particularly with regard to the Covenant's applicability to the treatment of aliens.

30. It had been well established that round-ups of Haitian workers were still occurring; that living conditions in the labour camps were abysmal, and that the freedom of movement of Haitian workers was often constrained. It was the State party's responsibility under the Covenant to enforce laws against such abuses, and the most effective means of doing so was close monitoring by labour inspectors and social services personnel.

31. The sweeping claim that there was no discrimination in the Dominican Republic on the basis of national origin (para. 28) was clearly at variance with statements made elsewhere in the report. He hoped that the State party's future reports to the Committee would be more detailed.

32. Mr. FODOR agreed with previous speakers regarding the State party's responses to items I (d) and I (g) of the list of issues. The Dominican Government had a responsibility to demonstrate that measures had been taken to ensure compliance with the provisions of the Covenant. It was not clear from the report whether any bodies existed to coordinate or certify enforcement of compliance measures. In particular, there did not appear to be any established mechanism whereby individual complaints could be brought to the attention of the authorities.

33. With regard to specific measures to resolve the problems mentioned in the list of issues, he wondered to what extent articles 23 of the Covenant, concerning the protection of families, had been honoured in practice. He also sought further information regarding discrimination on the basis of skin colour

(Mr. Fodor)

in the Dominican Republic and the measures taken by the Government to provide assistance to undocumented Haitian minors. He also wished to know whether the increased public awareness of the problem of violence against women mentioned in the report, had yielded any concrete results.

34. Mrs. CHANET agreed that the State party's response regarding the conditions of Haitian workers had been incomplete. According to information collected by ILO, the Lawyers Committee on Human Rights and reports in the press, Decree No.417-90 had had little impact. Employers who refused to abide by the decree had not been sanctioned, and the Government itself, through the armed forces, had apparently been involved in the involuntary recruitment of workers. Moreover, conditions in the camps had shown no signs of improvement: workers continued to complain of being confined, and children continued to be deprived of schooling. According to the Lawyers Committee for Human Rights, no workers had received work contracts.

35. She requested clarification regarding the nationality of those affected by the recent deportation decree 233/1991 and the exact circumstances of that deportation. According to press reports, members of the police and the military had destroyed the nationality documents of a number of Dominican nationals of Haitian descent before expelling them. If the reports were accurate, those actions represented important violations of article 8 of the Covenant. Finally, she wished to know what actions the State party had taken in response to the Committee's views on the Giry case (communication No. 193/1985).

36. Mr. WENNERGREN said that, while the report provided much useful information, he would have welcomed more details concerning the difficulties encountered in the actual implementation of the provisions of the Covenant. For example, paragraph 54 of the report merely stated baldly that the institution of slavery had been abolished in the Dominican Republic in 1822, with no effort to address the concerns expressed previously by the Committee over the use of forced labour on sugar cane plantations. He wondered whether the authors of the report were unaware of their country's previous dialogue with the Committee; greater continuity between successive periodic reports was called for. He fully shared the concerns expressed by Mrs. Chanet concerning the working conditions on the sugar cane plantations, which were totally unacceptable under the Covenant.

37. With regard to the situation of Haitian citizens in the Dominican Republic (para. 30), he was surprised that no mention had been made of Presidential Decree No. 233-91, which was a shocking measure from both a humanitarian and a human rights point of view. Under article 4 of that decree, the Minister of Labour was responsible for ensuring the repatriation of foreign workers under 16 and over 60 years of age, with the full cooperation of the Ministry of the Armed Forces and the Ministry of Foreign Affairs, as well as the national police and the armed forces. According to reports, the police and armed forces had been responsible for cruel and inhumane treatment of workers, and there had been many instances of grave human rights violations.

38. Several members had expressed concern over the lack of supervision of respect for human rights by public officials, such as army and police personnel. It appeared from the report that the Office of the Procurator-General of the

(Mr. Wennergren)

Republic bore sole responsibility in that field; accordingly, he would welcome information concerning the steps the Office had taken to investigate human rights abuses in the context of the repatriation of foreign workers and the results, if any, that had been achieved in terms of the prosecution and punishment of members of the police and armed forces found to be responsible for such abuses. He would also like to know what resources and staff were available to the Office and what facilities it had for the promotion and protection of human rights.

39. Mr. EL-SHAFEI said that he shared the grave concern expressed by other members over the expulsion of foreign workers, which entailed violations of articles 2, 8, 12, 13 and 26 of the Covenant. He could understand that the Dominican Republic might wish to take measures to regularize the situation of minors in response to the severe criticism of child labour made by ILO and other international organizations, but found it illogical and incredible that the country should seek to expel workers who had been resident there for 30 or 40 years and had made a substantial contribution to the Dominican economy. The Government appeared to be taking advantage of the destitute and vulnerable situation of those workers.

40. He would also welcome information on the procedure for incorporating the International Covenant into national law. It was still unclear whether that required an act of parliament, the enactment of new laws or some other procedure.

41. Mr. PICHARDO OLIVIER (Dominican Republic) said that, for international instruments to be incorporated into domestic law, they must first be ratified by the two chambers of the National Congress and then promulgated by the Government in the official gazette, following which they became law applicable throughout the territory of the Dominican Republic. That procedure had been followed for the International Covenant on Civil and Political Rights, which now formed part of domestic legislation. Under the Constitution, international instruments took precedence over domestic legislation in the event of conflict. The provisions of the Covenant could be invoked in the courts, although his delegation was so far unaware of any cases in which court judgements had been based specifically on those provisions.

42. Several members had expressed concern about the principle of reciprocity, referred to in paragraph 27 of the report. It was true that the Civil Code provided for aliens to be granted civil rights on a basis of reciprocity. However, the Civil Code predated the International Covenant and had not yet been amended accordingly, as perhaps it ought to be. In any case, now that the Covenant was part of the domestic legal order, aliens enjoyed the same civil and political rights as Dominican citizens.

43. The provisions of the Penal Code concerning expulsion of aliens were mainly intended to deal with cases where the internal and external security of the State were threatened. In practice, those provisions had not been used for many years and should perhaps be amended. A new law on immigration containing no provisions on the subject of expulsion was currently being drawn up with the help of advisers from international organizations, including the International Organization for Migration.

(Mr. Pichardo Olivier,
Dominican Republic)

44. The expulsion of Haitian citizens under the age of 16 pursuant to Decree No. 233-91 had been a response to complaints concerning the employment of minors in the agricultural sector. The Government had investigated those complaints and found that the minors in question had been recruited in their own country by Haitian nationals, who had lured them to the Dominican Republic with promises of high earnings. In many cases, they had no family or relatives in the Dominican Republic. In the light of the situation prevailing in Haiti, the measure had been suspended. His delegation would convey the Committee's concern to the Dominican Government so that steps could be taken to deal with the situation.

The meeting rose at 6.05 p.m.